

Before the
 Federal Communications Commission
 Washington, D.C. 20554

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| In the Matter of |) | |
| |) | |
| Amendment of Section 73.622(b) |) | MM Docket No. 01-244 |
| Table of Allotments, |) | RM-10234 |
| Digital Television Broadcast Stations. |) | |
| (Tyler, Texas) |) | |

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|--|---|----------------------|
| In the Matter of |) | |
| |) | |
| Amendment of Section 73.622(b) |) | MM Docket No. 01-245 |
| Table of Allotments, |) | RM-10235 |
| Digital Television Broadcast Stations. |) | |
| (Lufkin, Texas) |) | |

To: The Chief, Video Services Division, Media Bureau

PETITION FOR RECONSIDERATION

Pursuant to Section 1.429(a) of the Commission's Rules, International Broadcasting Network ("IBN") hereby petitions for reconsideration of the Report and Order ("Order") adopted on October 2, 2002, and released on October 9, 2002, in the above-captioned consolidated proceedings. In support of this petition, IBN respectfully states the following:

I.

IBN is an interested party and is adversely affected by the Order.

II.

As will be detailed with greater specificity herein, the Order was based on incorrect information and its adoption was arbitrary and capricious, an abuse of discretion and contrary to law.

III.

The Order was issued under delegated authority by the Chief of the Video Division of the Commission's Media Bureau. That individual may have lacked impartiality and been prejudiced against ~~IBN~~ because of **IBNs** being an evangelical Christian organization, a point that Civic License Holding Company, Inc. ("Civic") sought to exploit on more than one occasion. Moreover, that individual's misconduct was alleged in a previous proceeding which ultimately was the subject of judicial review by the Court of Appeals for the District of Columbia Circuit. Furthermore, it is a matter of public knowledge that there is a revolving door between the Commission and the law firm representing Civic and that the ~~firm~~ has influence that goes beyond its legal expertise. Under all of these circumstances, the decision-maker in the instant proceedings could not have been impartial and should have recused herself

IV.

The Order failed to deal with, or even mention, the issue of notice. As the comments and reply comments made quite clear, Civic failed to provide to ~~IBN~~ the notice required by the Commission's Rules with respect to various documents Civic filed with the Commission. That failure was highly prejudicial to ~~IBN~~, and it should have disqualified Civic from receiving the relief it sought.

V.

The Order appears to **accept** everything Civic said in its comments and reply comments even though Civic provided no substantiation whatsoever. Civic offered not a scintilla of evidence to support its false claims, and it certainly did not meet its burden of proof.

VI.

The Order appears to either ignore or summarily reject everything all parties other than Civic said in their comments. The comments filed by the City of Lufkin were not even mentioned or otherwise acknowledged. Those filed by the Lufkin Independent School District, Lufkin Educational Broadcasting Foundation, Media Services Group of East Texas and others were briefly alluded to but did not appear to be taken into consideration in any kind of meaningful way. Moreover, the petitions of thousands of persons residing within the coverage areas of Civic's stations, the number and content of which were sworn to by an independent certified public accountant whose affidavits are included in the record, were rejected because, "The signers did not provide any reason to support their conclusion." Such a statement reflects an incredible disdain for the public whose interest the Commission is obligated to protect. Each signer of a petition obviously had his or her own reason to support **IBNs** opposition to the proposed substitution of channels despite the misinformation campaign that was launched by Civic in a failed attempt to mislead the public and thwart the public will. The Order's unreasoned rejection of the public comments and petitions reflects a failure to acknowledge that the public interest is paramount to the private financial interests of Civic.

VII.

The Order's gratuitous and profuse endorsement of Civic, including particularly its reference to Civic's "cooperative spirit," is unjustified and lacks any factual basis whatsoever. Similarly, the Order's statements that "Civic ~~has~~ attempted to ~~ease~~ the impact of its proposed channel substitutions on the operation of low power stations KIBN and KLGW" and that Civic "~~has~~ apparently offered other assistance to IBN" are unjustified and misleading. These are the kind of unsupported and misleading statements that one would expect Civic to write, and they reflect a profound lack of objectivity.

VIII.

As the record reflects, the FCC, using a computer program designed to avoid unnecessary displacements, allocated DTV channels 38 and 43 to Civic. Civic applied for and was granted construction permits to build its DTV facilities on those allocated channels. Those construction permits ~~are~~ still in effect, having been extended twice, and there is no legitimate reason whatsoever that construction should not proceed in accordance with ~~those~~ construction permits. Civic's quest to take IBN's channels rather than to build on the allocated channels was pursued with the knowledge that the proposed substitutions, if granted, would cause enormous harm to IBN. It is unconscionable that the Commission would allow Civic to inflict injury on IBN's stations, which have a proven record ~~of~~ public service, the strong support of public officials and community leaders and a large audience of loyal viewers.

IX.

The Commission is required by the Communications Act of 1934 to act in the

public interest. In these proceedings, it has not done so.

X.

The Commission is also required to abide by the Constitution of the United States. The Fifth Amendment expressly prohibits takings of property without due process and just compensation. There is a growing body of case law that applies that prohibition to regulatory takings. In the instant proceedings, IBNs licensed channels are being taken away for the benefit of Civic, a commercial enterprise. That is repugnant to the Constitution.

XI.

The ~~Equal~~ Protection Clause of the Constitution may also apply. The Commission's establishment of favored classes of television stations is repugnant to this provision of the Constitution and to contemporary standards of fairness. The Commission should not treat IBNs stations as though they were less important or less worthy of protection than Civic's stations. A caste system within broadcasting is inappropriate. Small broadcasters like IBN are no less important to their viewers and the communities they serve than the more favored classes of broadcasters. No station should be considered to be expendable. ~~IBN~~ recognizes, however, that this is not the prevailing view at the Commission.

XII.

There is no statutory or regulatory provision that requires that channel substitutions be granted. Within the constraints of the Constitution, statutes and administrative rulings and precedents, the Commission has broad discretion to grant or

deny such substitutions. It may not do so, however, in disregard of the public interest, in violation the Constitution or in violation of the Communications Act of 1934, the Administrative Procedure Act or any other federal statute. In these proceedings, there has been an appalling disregard for constitutional and statutory requirements as well as fundamental standards of fairness and due process.

XIII.

Civic's contention that the Commission may not consider allegations of misconduct in the context of an allotment proceeding, a position uncritically reflected in footnote 7 of the Order, is unpersuasive. The cited cases can be easily distinguished because they involved alleged wrongdoing that was unrelated to the rule making. In the instant proceedings, IBN has documented wrongdoing, including misrepresentations, committed by Civic within the context of the rule making and directly related thereto. Such wrongdoing is clearly relevant and must not be ignored.

XIV.

For reasons of brevity and time constraints, IBN has used the term "Civic" herein when referring to Civic License Holding Company, Inc., or any of its many affiliated entities or alter egos. It is undisputed, however, that The Liberty Corporation, of Greenville, South Carolina, is the actual owner and operator of the stations formerly licensed to Civic License Holding Company, Inc., and that CivCo, Inc. ("CivCo"), of Reno, Nevada, is the current licensee of those stations. LibCo, Inc., also of Reno, Nevada, is a corporate twin of CivCo and has the same officers and ownership. The Order, however, fails to acknowledge CivCo as the stations' licensee. Moreover, the

record in this proceeding, **as** shown on the Commission's website, does not contain any statement by CivCo in compliance with the requirements of Paragraph 2 of the Appendix to the Commission's Notice of Proposed Rule Making adopted September 14, 2001, and released September **19, 2001**. Since CivCo is the licensee, only CivCo can make that required statement. Furthermore, Civic License Holding Company, Inc., not being the current licensee, cannot comply with Paragraph 10 of the Order.

XV.

For all of the foregoing reasons, and for all of the reasons set forth in IBN's previous filings, IBN respectfully urges that the aforementioned Report and Order be reconsidered and that the substitution of channels be rescinded or otherwise nullified.

Respectfully submitted,

INTERNATIONAL BROADCASTING **NETWORK**

By its President

A handwritten signature in black ink, appearing to read "Paul J. Broyles". The signature is fluid and cursive, with the first name "Paul" and last name "Broyles" clearly distinguishable.

Paul J. Broyles
5206 FM 1960 West, Suite 105
Post Office Box 691111
Houston, Texas 77269-1111

Telephone: **281-587-8900**

E-Mail: IBN@evl.net

November **7.2002**

CERTIFICATE OF SERVICE

I, Paul J. Broyles, hereby certify that on this 7th day of November 2002 a copy of the foregoing PETITION FOR RECONSIDERATION ~~has~~ been served by first-class mail, postage prepaid, upon the following:

John S. ~~Logan~~
Scott S. Patrick
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036-6802
(Counsel for Civic License Holding Company, Inc.)

Bert McKinney, CPA
6 Windsor Court
Lufkin, Texas 75901

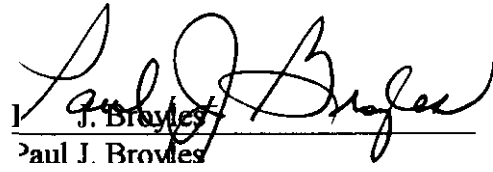
C. G. Maclin, City Manager
City of Lufkin
Post Office Drawer 190
Lufkin, Texas 75902-0190

David A. Sharp, Superintendent
Lufkin Independent School District
Post Office Box 1407
Lufkin, Texas 75902

C. Dwyan Calvert, General Manager
Lufkin Educational Broadcasting Foundation
Post Office Box 151340
Lufkin, Texas 75915-1340

Lee Miller
Media Services Group of East Texas
Post Office Box 154022
Lufkin, Texas 75915-4022

Richard L. Rambin
1109 Maberry
Lufkin, Texas 75901


Paul J. Browles

International Broadcasting Network
5206 FM 1960 West, Suite 105
Post Office Box 691111
Houston, Texas 77269-1111

Telephone: 281-587-8900

E-Mail: IBN@evl.net